

REMARKS

Claim Rejections

Claims 20-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. (U.S. 6,100,208) in view of Roe et al. (U.S. 5,834,381).

Drawings

It is noted that the Examiner previously accepted the drawings as originally filed with this application.

Claim Amendments

By this Amendment, Applicant has amended claim 20 of this application. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Brown et al. teaches a non-woven first outer layer (12), a non-woven middle barrier layer (16) being a water impervious layer such as polyurethane, and a non-woven or woven second outer layer (14). Brown et al. does not teach the center barrier having a woven layer.

As noted on page 3 of the outstanding Office Action, Brown et al. "does not teach a reinforcing layer in the polyurethane layer." Since Brown et al. does not teach the middle layer of the present invention, Brown et al. can not teach the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer.

Brown et al. do not teach a middle layer having a woven fabric made of polyamide fibers and a water proof and air permeable polyurethane resin coating the polyamide fibers; the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor do Brown

et al. teach the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

The secondary reference to Roe et al. teaches a non-halogenated tri-laminate fabric including a polyester knitted or woven fabric scrim (14) pressed between an upper and lower thermoplastic olefin film (12); and a methane coating (18) located on the upper thermoplastic olefin film (12).

Roe et al. do not teach an upper layer having at least one layer of a first non-woven fabric, the upper layer is water repellant and air permeable; a lower layer having at least one layer of a second non-woven fabric; the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor do Roe et al. teach the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

Brown et al. does not teach or suggest the middle layer of the present invention and Roe et al. is totally devoid of any suggestion of an upper layer and a lower layer as taught by the present invention. Therefore, applicant submits that it is not obvious to utilize a portion of the fabric taught by Roe et al. in combination with the upper and lower layers of Brown et al. to reverse engineer the fabric of the present invention.

Even if the teachings of Brown et al. and Roe et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor does the combination suggest

the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the

patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Brown et al. or Roe et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Brown et al. nor Roe et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

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Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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